

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH H. HEMPSTEAD,

Plaintiff-Appellee,

v

CHARTER TOWNSHIP OF WATERFORD and
WATERFORD TOWNSHIP GENERAL
EMPLOYEES RETIREMENT SYSTEM,

Defendants-Appellants.

UNPUBLISHED

April 20, 2006

No. 259408

Oakland Circuit Court

LC No. 2003-051762-AA

Before: Cooper, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

Defendants appeal as of right the issuance of a writ of superintending control in plaintiff's favor. We reverse.

This case arises from defendants reduction of plaintiff's local retirement pension. Shortly after plaintiff's retirement as a district court judge, defendants reduced plaintiff's pension asserting that the amount had been miscalculated because the state standardization payment was impermissibly included in the calculation of both plaintiff's state and local pensions. Plaintiff requested a rehearing before the pension committee, which was granted and culminated in the affirmance of the reduction. Plaintiff then sought a writ of superintending control from the circuit court, which was issued after findings including that (1) defendants improperly attempted to expand the record on appeal and such exhibits were stricken, (2) the decision did not comply with the governing ordinance, and (3) the decision was not supported by competent, material, and substantial evidence. This appeal followed.

First, defendants argue that the circuit court erroneously concluded that they attempted to expand the record on appeal therefore their exhibits were improperly stricken. A circuit court's decision to admit or exclude evidence is reviewed by this Court for an abuse of discretion. *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004).

Pursuant to Waterford Township Ordinance § 2-161(b), "[a]ppeals from a final decision of the pension committee shall be to the circuit court . . ." and "[t]he review of the court shall be restricted to the record made before the pension committee, and the court shall not permit the introduction of new evidence on any of the issues presented before the pension committee." The dispute here is which documents or exhibits actually constitute the "record."

Plaintiff contends that because defendants did not formally introduce the contested documents into the record, such evidence is not part of the record. Defendants contend that their motion requesting that the applicable statutes and ordinances, actuarial evaluations, as well as related board minutes and correspondence, be incorporated into the record, and the tribunal's grant of the motion, was sufficient to cause the contested evidence to become part of the record. We agree with defendants. The pension committee had the express right to "adopt its own rules of procedure" and indicated that it would consider the contested evidence as part of the record. See Waterford Township Ordinance § 2-95. In other words, the committee did not adopt a rule of procedure requiring the formal introduction of evidence. Because the pension committee accepted and considered the disputed evidence, the circuit court's review of a record that included this evidence would not constitute permitting "the introduction of new evidence." Therefore, the circuit court improperly excluded documents that were part of the lower tribunal's record.

Next, defendants argue that the circuit court erred in finding that the decision to reduce plaintiff's pension benefits was not supported by competent, material, and substantial evidence. We agree. Our review is limited to whether the circuit court applied the correct legal standard and whether it grossly misapplied or misapprehended the substantial evidence test to the hearing tribunal's factual findings. *In re Grant*, 250 Mich App 13, 18; 645 NW2d 79 (2002). "Substantial evidence" is that amount of evidence which reasonable minds would accept as enough to support a conclusion. *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994). And, when there is sufficient evidence to support the agency's decision, a court is not permitted to substitute its judgment for that of the agency, even if the court would have reached a different conclusion or result. *Fritz v St Joseph Co Drain Comm'r*, 255 Mich App 154, 163; 661 NW2d 605 (2003).

Here, the issue is whether the decision to reduce plaintiff's pension was supported by enough evidence to justify the action. The evidence presented to the pension committee included (a) a letter dated February 21, 2003, addressed to plaintiff from Retirement System Chairman, Nancy J. Smith, explaining the error in the calculation of plaintiff's pension and the determination to reduce his benefits, and (b) the Certification of Final Salary and Final Average Salary for Computation of State and Local Judicial Retirement Benefits provided by the state of Michigan indicating that plaintiff's final salary included "state salary standardization payment converted to JRS in the amount of \$18,290.00." In other words, the evidence provided that the state salary standardization payments were simultaneously used to compute both plaintiff's state pension benefits and his local retirement benefits, in contravention to MCL 38.2504(2). While plaintiff has averred that he "opted out" of the conversion of these amounts from the state system in accordance with MCL 38.2504, his assertion was contradicted by the evidence and, in any event, involved a credibility determination that was within the province of the pension committee. See *Payne, supra*; *Butcher v DNR*, 158 Mich App 704, 707; 405 NW2d 149 (1987). Therefore, the decision to reduce plaintiff's local retirement pension because the salary standardization payment was being considered for purposes of calculating plaintiff's state retirement pension was supported by substantial evidence and the circuit court improperly substituted its judgment for that of the pension committee. Accordingly, the issuance of the writ of superintending control on this ground constituted an abuse of discretion. See *In re Grant, supra* at 14.

Defendants also argue that the circuit court erred in concluding that defendants' written decision regarding the reduction in benefits violated Waterford Township Ordinance § 2-161(a). After de novo review, we agree. See *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003).

Waterford Township Ordinance § 2-161(a) provides, in relevant part:

A final written decision on the matter being appealed shall be issued by the pension committee. The decision shall include a summary of the findings of fact and an application of the ordinance provisions or other applicable law.

Following the hearing before the pension committee, on July 18, 2003, counsel for defendants forwarded a letter to plaintiff summarizing the committee's conclusions. The contested letter provided, in relevant part:

[T]he Committee determined that pursuant to MCL 38.2101 et. al., Judge Hempstead's local pension benefit was improperly calculated as it was based in part on a portion of his state salary standardization payment that was also included in his base salary for purposes of calculating his benefit under the Judges Retirement System. The Committee also determined that pursuant to section 2-74 of the Retirement Ordinance, Judge Hempstead's benefit must be actuarially adjusted to recoup the overpayment made as a result of the improper calculation.

Plaintiff contended, and the circuit court agreed, that the letter did not comport with the requirements of Waterford Township Ordinance § 2-161(a). But, the letter contains the dispositive findings of fact that the pension benefit was improperly calculated, the means by which it was improperly calculated, and the remedy for the mistake. The relevant statutory and ordinance provisions were referenced. That the pension committee concluded that plaintiff failed to opt out of the state standardization payment conversion is implicit in its factual determination that the state was using the disputed funds to calculate his state pension benefits. In sum, the letter was sufficient to meet the requirements of § 2-161(a).

Finally, defendants argue that the circuit court erred in reinstating plaintiff's prior pension amount and in ordering the repayment of monies previously withheld. However, in light of our reversal of the circuit court's issuance of a writ of superintending control, we need not address this issue.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald